IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8212 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARAPPALILE VARKEY VARGHESE

Versus

STATE OF GUJARAT SECRETARY-REVENUE DEPTT

Appearance:

MR CH VORA for Petitioner

Mr.I.M. Pandya AGP for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 06/10/2000

ORAL JUDGEMENT

Learned advocate Mr. Vora is appearing for the petitioner and learned AGP Mr. Pandya is appearing for the respondent authorities. This petition was admited by

this courton 20.9.2000 and rule was made returnable on 6th October, 2000.

The petitioner herein was serving as a junior clerk in the respondent Board and he applied for grant of plot of land of 100 sq. mtrs. He was alloted plotof land on 5.9.1981 and price of the plot was paid on 15.10.1981. Thereafter, show cause notice was issued on 7.4.1988 by respondent no.2 alleging that he has filed false affidavit for getting the plot and thereafter on 23/24.5.1988, respondent NO.3 cancelled the allotment of plot which was made in petitioner's favour. Thereafter on 17.9.1993, criminala case no. 1057 of 1990 filed against the petitioner came to be decided and the petitioner was acquitted by the criminal court of the charges leveled against him. Inview of that, on 7.3.1994, the petitioner applied for plot of land to the respondent no.3 and supplied copy of the judgment which application came to be rejected by the third respondent on 16.3.1995. Against the said rejection, the petitioner filed revision application before respondent no. 1 which was allowed on 12.6.1996 and again the petitioner approached the respondent no.3 for allotment of the plot of land on 12.9.96, 4.10.1996 and 26.3.87, 10.8.97,16.5.97 and wrote letters to the respondent no. 3 on 26.5.99 and 28.6.99, Ib 4th Sept./Oct.1999, rejected the claim of the petitioner. Even thereafter also, the petitioner approached the respondent no.3 on 25.10.1999 and 8.12.1999 but of no avail and hence the petitioner approached this court by this petition.

Learned advocate Mr. Vora appearing for the petitioner has submitted that the reason for cancelling the allotment of the plot of land was alleged misrepresentation namely filing of false affifdavit and since the petitioner was acquited in the said criminal case, the respondent authorities ought to have reconsidered the case of the petitioner in view of his repeated representations made time and again in this behalf. He has submitted that the petitioner is required to be allotted the plot of land at the same price prevailing in the year 1981. He has submitted that such inaction on the part of the respondent authorities has caused great prejudice and injustice which is apparent on the face of therecord. The petitioner is aged about 64 years and, he has submitted that some suitable directions are required to be issued against the Respondents so that the petitioner can get the plot of land at the price prevailing in the year 1981.

As against that, learned AGP Mr. Pandya has

submited that the allotment order has rightly been cancelled by the authority and the question of reallotment is required to be considered independently by the authorities and it is the power with the State Government to allot or not the land inquestionto the petitioner and the State Government has rightly rejected the prayer of the petitioner for reallotment and now the petitioner isnot entitled to any reliefs prayed for in this petition. According to him, no illegality has been committed by the authorities. He has submitted that there is no any in action on the part of the respondent authorities.

I have considered the submissions made by the learned advocates for the parties. It is important to note that the order passed by the Deputy Secretary (Appeals) dated 12.6.1996 is very important order in the subject matter of this petition. The authority has discused the facts in detail and has come to the conclusion that in light of the fact that the petitioner has been acquitted in the criminal proceedings initiated against him, therefore, the ground for cancellation of allotment is not existing and,therefore, application for reallotment of the land inquestion submitted by the petitioner is required to bereconsidered by the respondent authorities while keeping in view that fact. Said authority has appreciated another aspect that the affidavit which was filed by the petitioner was not false but according to the facts which were required to be filled up or required to be mentioned in the affidavit as to whether the petitioner is having any land in the State of Gujarat ornot. Itisnot in dispute that the petitioner was not having any land in theState of Gujarat but in Kerala, he is having one residential house which canot be considered to be false affidavit. Incriminal case,however, this fact has been considered and the petitioner was acquited by thecriminal court. Therefore, said authority has set aside the order passed by the Collector,Kachchh dated 16th March,1995 and directed the Collector for reconsidering the case of the petitioner for allotment of land. In view of the said order, the petitioner approached the collector time andagain but no response has beengiven to such representations and ultimately by order dated 4.10.1999, decision of the State Government has been communicated to thepetitioner that his application has been rejected by theState Government.

After perusal of the entire correspondence and the orders and observations made by the deputy secretary (appeals), I am of the opinion that in fact, the

petitioner has been harrassed by the authorities. The observations made by the deputy secretary as well as the directions given by him have not been observed and complied with in their proper perspective by the collector, Kachchh while considering the application of the petitioner. Not only that but before passing the order adverse to the petitioner, the petitioner has not been given any opportunity of hearing and thepetitioner has become victim of inaction on the part of the State AUthorities and,therefore, I am of the pinion that the case of thepetitioner is required to bereconsidered by the State Authorities,namely respondent NO.1 in light of the observations made by the deputy secretary (appeals) in his order dated 12.6.1996 and, therefore, necessary directions are required to be issued in that regard in the interest of justice.

Therefore, in the result, order passed by the Collector, Kachchh in the name of the State Govoernment dated 4.10.1999 page 41 is hereby quashed and set aside. Respondents no.1 and 2 are directed to reconsider the case of the petitioner for reallotment of the land at theprice prevailing in theyear 1981 while keeping in view the observations made by the deputy secretary (appeals) dated 12.6.1996 within two months from the date of receipt of certified copy of this order. Respondents no.1 and 2 are further directed to reconsider the case of thepetitioner in sympathetic manner while considering the age of the petitioner as well as the acquittal in criminal caseand also keeping in view the fact that the petitioner has paid the price of theland in question of Rs.3020.60 to the respondents on 15.10.1981 and the said amount has not been paid back to the petitioner after cancellationof the allotment and the said amount has been utilised by the State Government. The respondents no. 1 and 2 are directed to keep in view all these aspects while reconsidering the case of the petitioner within two months from the date of receipt of certified copy of this order, without fail. This petition is allowed to the extent as aforesaid. Rule is made absolute in terms indicated hereinabove. There shall be no order as to costs.

6.10.2000. (H.K. Rathod,J.)